IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 69 of 2006.

Reserved on: 05.12.2007.

Decided on: 26.12.2007.

H.P. State Forest Corporation & Another. … … Petitioners.

Versus

Presiding Judge & Another. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1]

For the Petitioners:	**Mr. B.M. Chauhan, Advocate.**
For Respondent No.1:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan, Deputy Advocate General.**
For Respondent No.2:	**Mr. G.D. Verma, Sr. Advocate with Mr. B.C. Verma, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid to the award passed by the Labour Court, Shimla in reference No.69/2002, dated 28th September, 2005.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court on 25th February, 2003:-

> **"Whether the transfer of Smt. Lalita Sharma W/O Sh. Ghan Shyam Sharma vide order dated 17.12.1999 and 20.4.2000 and not regularising as Clerk in the Pay Scale applicable to the H.P. Govt. employee by the Managing Director, H.P. State**

---

[1] Whether reporters of local papers may be allowed to see the judgment?

Forest Corporation Ltd. Kasumpti, Shimla-9 and Divisional Manager, H.P. State Forest Corporation Ltd., Division Chamba is proper and justified? If not, from what date and what scale the above workman is entitled to be regularised?"

The respondent No.2 (hereinafter referred to as the workman for convenience sake) filed her statement of claim before the Labour Court, primarily challenging her transfer order and seeking regularization as Clerk/Typist with effect from 1.4.2000 in regular pay-scale of Rs.3120-5160. The employer had filed reply to the statement of claim. The principal stand in the reply filed by the employer with regard to transfer was that it was due to administrative exigencies and as far as seeking regularization by the workman as typist/Clerk with effect from 1st April, 2000 is concerned, the stand of the employer was that the workman was never appointed as Clerk/Typist and has been paid the wages in accordance with law.

The Labour Court on the basis of the evidence led by the parties answered the reference in affirmative on 28.9.2005.

Mr. B.M. Chauhan had strenuously argued that the award dated 28.9.2005 is not sustainable in the eyes of law. He had further contended that the Labour Court has committed illegality by directing the employer to regularise the services of the workman as Clerk with effect from 19.3.2001. Mr. G.D. Verma, learned Senior Advocate with Mr. B.C. Verma, Advocate appearing on behalf of the workman had supported the award dated 28th September, 2005.

I have heard the learned counsel for the parties and have also gone through the record carefully.

The workman had appeared as PW-1 before the Labour Court and had testified that she had been continuously discharging the duties of Clerk-cum-typist in the office of D.M. and Assistant Manager at

Chamba since 19.3.1991. She had also produced the copies of experience certificate Ex.P-1 and Ex.P-2 alongwith her matriculation certificate and copy of I.T.T. Diploma in Hindi Stenography.

Mr. Shafi, Senior Assistant-cum-Establishment Incharge, Forest Working Division, Chamba has appeared as RW-1. He has stated before the Labour Court that the workman had been working as daily waged Chowkidar/Fieldsman since March, 1991. He had further testified that the certificates, that is Ex.P-1 and Ex.P-2 have not been issued in accordance with law. The petitioners have placed on record the copies of experience certificates issued in favour of the workman marked as Annexures P-6 and P-7 respectively. These certificates have been issued by the Divisional Manager, Forest Division, Chamba, H.P. Annexure P-6 is dated 26th October, 1999, but Annexure P-7 is not dated.

It is evident from the statement of the workman as PW-1 as well as on the basis of the experience certificates Annexures P-6 and P-7 that the workman had been working as typist-cum-clerk though engaged as Chowkidar. It appears from the contents of Annexure P-13 dated 17.12.1999 that the practice of assigning higher duties to the daily wages Chowkidars and Timber Watchers was in vogue in the petitioner-Corporation. The Managing Director has issued instructions to all the Directors, DMs/GFs on 17.12.1999. The relevant text of letter dated 17.12.1999 reads thus:-

> **"This office has issued instructions time and again that daily wage staff should be entrusted duties strictly as per their designation. Despite this, it has been noticed that daily wagers are assigned different duties. In some cases, chowkidars and Timber Watcher/Resin Watcher are entrusted the duties of clerks etc. An awkward position is being created in the court where the daily-wage chowkidars/timber**

watchers produces certificates of the DMs to the effect that they are performing duties of clerks. This is highly undesirable and such practice is required to be stopped.

You are directed to entrust duties to the daily-wage staff strictly as per their designation. No certificate shall be issued by any one to the effect that such daily wagers have performed duties of any higher post like Clerk etc. If any such case again come to the notice of this office, strict disciplinary action shall be taken against the erring officer. It may also be ensured that the Timber Watchers and Chowkidars (except Chowkidars posted for watch and ward or peons job in office) are posted in the field. They should not be posted in the offices. These instructions may be brought to the notice of all concerned."

It is also reiterated in Annexure P-12, dated 18.2.2000 that the instructions issued by the Managing Director vide letter dated 17.12.1999 should be followed scrupulously and the daily wagers should be given duties as per their designation. It appears from the award that the workman had approached the Labour Court under Section 33-C(2) of the Industrial Disputes Act, 1947. She was held entitled to the wages of Clerk-cum-typist in application No.106/2003 (RBT No.129/2004) decided on 5.8.2005 by the Labour Court, Dharamshala. The order dated 5.8.2005 further strengthen her case that she had been discharging the duties of the Clerk in the Forest Corporation. The copy of the order dated 5.8.2005 passed in application No.106/2003 was placed on the record of the Labour Court in reference No.69/2002 as well. The documents placed on record by the petitioner by way of CMP No.1721 of 2007 have no bearing on this case since the Court has to adjudicate upon only whether the award dated 28.9.2005 is sustainable or not.

From the above discussion, it is thus evident that there is neither any jurisdictional error nor any procedural impropriety in the award dated

28.9.2005. The award has been passed by the Labour Court by adopting correct process of reasoning. The impugned award is up-held.

Accordingly, the writ petition is dismissed with no order as to costs.

December 26, 2007. **(Rajiv Sharma),**
(sck) **Judge.**